

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MASSACHUSETTS**

INSITUFORM TECHNOLOGIES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 04-10487GAO
	)	
AMERICAN HOME ASSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**EXHIBIT C TO AFFIDAVIT OF LAWRENCE B. BUTLER**

**AIG Technical Services, Inc.**

EXCESS CASUALTY CLAIMS DEPARTMENT

175 Water Street, 22<sup>nd</sup> Floor

New York, NY 10038

Phone: (212) 458-3725 Fax: (212) 458-5679

e-mail: [juanita.britton@AIG.com](mailto:juanita.britton@AIG.com)

February 13, 2004

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Insituform Technologies, Inc. et al  
702 Spirit 40 Park Drive # 105  
Chesterfield, MO 63005-1195

**RE: Insured : Insituform Technologies, Inc**  
**Claimant : Massachusetts Resource Water Authority**  
**Date of Loss : September 1, 2003**  
**Our File # : 169-147477**  
**Policy # : BE 3206923**

**DECLINATION OF COVERAGE**

Dear Sir/Madame:

AIG Technical Services, Inc., ("AIGTS") is the claims administrator on behalf of American Home Assurance Company ("American Home"), in connection with the above-referenced excess policy issued to Insituform Technologies, Incorporated ("Insituform"). The American Home excess policy has effective dates of July 1, 2003 to July 1, 2004 with per occurrence limits of \$25 million excess over a \$1 million primary policy with Liberty Mutual.

We received notice of this matter on/or about 1/5/04 for a claim involving work performed by Insituform on behalf of Massachusetts Resource Water Authority ("MRWA"). Based upon the information that is presently known, Insituform was hired to install sewer liner inside pipes that were owned, maintain and/or controlled by MRWA. The work was completed on or about August of 2003. In September of 2003 it is alleged that voids and leaks at the seams were detected in various sections of the liner. As a result of this discovery Insituform must replace approximately 400,500 feet of sewer liner.

After careful review of the facts, as presently known to AIGTS, this loss arises out of alleged damage and or a defect to your product and/or your work. Based upon these facts, there is no coverage for Insituform under the American Home excess policy. Please refer to your American Home policy, which contain the following pertinent insuring agreements, definitions and exclusions.

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## Insuring Agreements

### I. Coverage

We will pay on behalf of the **Insured** those sums in excess of the Retained Limit that the **Insured** becomes legally obligated to pay by reason of liability imposed by law or assumed by the Insured under an Insured Contract because of Bodily Injury, Property Damage, Personal Injury or Advertising Injury that takes place during the Policy Period and is caused by an Occurrence happening anywhere in the world. The amount we will pay for damages is limited as described in Insuring Agreement III, Limits of Insurance.

If we are prevented by law or statute from paying on behalf of the Insured, then we will, where permitted by law or statute, indemnify the Insured for those sums in excess of the Retained Limit.

### IV. Definitions

E. **Insured** means each of the following , to the extent set forth:

1. The **Named Insured**, meaning:
  - b. any organization newly acquired, controlled or formed by you during the policy period but only:
    - 1) as respects Occurrence taking place after you acquire, take control or form such organization;
    - 2) if such organization is included under the coverage provided by the policies listed in the Schedule of Underlying Insurance and
    - 3) if you give us prompt notice after you acquire, take control or form such organization.

We may make additional premium charge for any additional organizations you acquire, form or take control of during the period of this policy.

H. **Occurrence** means:

1. As respects to **Bodily Injury** or **Property Damage**, an accident, including continuous or repeated exposure to conditions, which results in **Bodily Injury** or **Property Damage** neither expected nor intended from the standpoint of the **Insured**. All such exposure to substantially the same general conditions shall be considered as arising out of one **Occurrence**...

**AIG**

A Member Company of  
American International Group, Inc.

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**J. 1. Products-Completed Operations Hazard** includes **Bodily Injury** and **Property Damage** occurring away from your premises you own or rent and arising out of Your Product or Your Work except:

- a. products that are still in your physical possession; or
- b. work that has not yet been completed or abandoned.

**K. Property Damage** means:

1. Physical Injury to tangible property, including all resulting loss of use of the property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property that is not physically injured.

**N. Your Work** means:

1. work or operations performed by you or on your behalf; and
2. materials, parts or equipment furnished in connection with such work or operations.

**V. Exclusions**

This insurance does not apply to:

**F. Property Damage to Your Product** arising out of it or any part of it.

**G. Property Damage to Your Work** arising out of it or any part of it and included in the **Products-Completed Operations Hazard**.

This exclusion does not apply if the damaged work or the work of which the damage arises was performed on your behalf by a subcontractor.

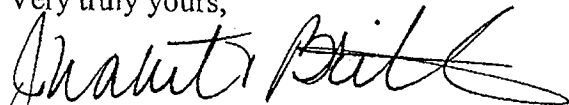
The investigation of this loss indicates that the only claim presented is for the replacement of the sewer liner that was allegedly improperly installed by Insituform. Consequently, Exclusion F and G would preclude coverage for the damages sought, as your policy specifically excludes coverage for property damage to property that must be replaced, restored or repaired because your work was incorrectly performed on it.

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The grounds for AIGTS present assertion of no coverage are set out to inform you of American Home's coverage position. This letter is not, and should not be construed as a waiver of any terms, conditions, exclusions or other provisions of the policy, or any other policies of insurance issued by American Home or any of their affiliates. If subsequent information indicates that such action is warranted, American Home expressly reserves all rights under the policy, including the right to supplement this coverage letter to include any additional grounds for denying coverage, including but not limited to those set forth above. Should you have additional facts that you feel may alter American Home's coverage position or if you receive suit papers in relation to this matter, please advise the undersigned of those facts promptly. I can be reached directly at (212) 458-3725.

Very truly yours,



Juanita M. Britton  
Excess Casualty Claims

cc. Liberty Mutual Insurance Company  
70 East Sunrise Highway, 4<sup>th</sup> floor  
Valley Stream, NY 11581

Lockton Companies  
3 Cityplace Drive, Suite 900  
St. Louis, MO 63141